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ENGROSSED HOUSE BILL 1836

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Ormsby, Wood, Dunshee, Campbell, Moeller, Van De Wege, Simpson, Driscoll, Chase, and Conway

Read first time 01/30/09. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to public works involving off-site prefabrication;  
2 adding a new section to chapter 39.12 RCW; creating a new section;  
3 prescribing penalties; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.12 RCW  
6 to read as follows:

7 (1)(a) For any public work estimated to cost over one million  
8 dollars, the contract must contain a provision requiring all contracts  
9 entered into by the prime contractor, all subcontractors and their  
10 subcontractors, and employers who are not required to register as  
11 contractors under chapter 18.27 RCW to submit a certified list of any  
12 off-site, prefabricated, nonstandard, project-specific items produced  
13 under the terms of each respective contract and produced outside  
14 Washington. The list must be submitted to the awarding agency and to  
15 the department of labor and industries within ten days of delivery of  
16 the item under the respective contract. The list must provide:

17 (i) A general description of the item;

18 (ii) The name and address of the contractor, subcontractor, or  
19 employer;

1 (iii) The name and address of the contractor, subcontractor, or  
2 employer that produced the item if other than the contractor,  
3 subcontractor, or employer; and

4 (iv) The federal employer identification number of the contractor,  
5 subcontractor, or employer that produced the item.

6 (b) If the awarding agency is aware of incidences of noncompliance  
7 with the requirement to submit a list under (a) of this subsection, the  
8 awarding agency must report such incidences to the department of labor  
9 and industries. The failure to file a certified list required under  
10 (a) of this subsection constitutes the failure to file a record  
11 required to be filed under this chapter and subjects the contractor,  
12 subcontractor, or employer to the penalties in RCW 39.12.050. However,  
13 no penalty may be imposed for a first violation if the contractor,  
14 subcontractor, or employer files the certified list within a reasonable  
15 time as determined by the department of labor and industries.

16 (2)(a) For any public work estimated to cost over one million  
17 dollars, the contract must contain a provision requiring that all  
18 contracts entered into by the prime contractor, all subcontractors and  
19 their subcontractors, and employers who are not required to register as  
20 contractors under chapter 18.27 RCW for the production of off-site,  
21 prefabricated, nonstandard, project-specific items which are produced  
22 outside Washington contain a requirement for the production of  
23 certified copies of payroll records as provided in subsection (3) of  
24 this section. The contract must also state that the contractor or  
25 employer producing the items consents to the jurisdiction of Washington  
26 for the enforcement of subsection (3) of this section.

27 (b) If the director of the department of labor and industries  
28 determines after a hearing under chapter 34.05 RCW that a prime  
29 contractor, subcontractor, or employer has failed to comply with this  
30 subsection, the prime contractor, subcontractor, or employer is subject  
31 to a civil penalty of one thousand dollars for each second or  
32 subsequent failure to comply. Civil penalties shall be deposited into  
33 the public works administration account. The civil penalty does not  
34 apply to a violation determined by the director to be an inadvertent  
35 error.

36 (3) Within ten days of receipt of a request by an interested party,  
37 contractors, subcontractors, and employers producing the items  
38 identified in subsection (2)(a) of this section outside Washington must

1 file with the awarding agency and the department of labor and  
2 industries certified copies of payroll records. The payroll records  
3 must contain the number of labor hours expended producing the items and  
4 the hourly rate of wages paid to the workers in each trade or  
5 occupation used in producing the items. If the awarding agency is  
6 aware of incidences of noncompliance with the requirement to submit  
7 payroll records under this subsection, the awarding agency must report  
8 such incidences to the department of labor and industries. The failure  
9 to produce the certified copies constitutes the failure to file a  
10 record required to be filed under this chapter and subjects the  
11 contractor, subcontractor, or employer to the penalties in RCW  
12 39.12.050.

13 (4) This section does not apply to entities responsible for  
14 supplying the materials to the manufacturers, fabricators, or employers  
15 that will be used to complete, construct, or assemble the items prior  
16 to their delivery to the public works site.

17 (5)(a) The required lists, payroll records, and certifications  
18 under this section must be submitted on forms made available by the  
19 department of labor and industries.

20 (b) The department of general administration shall develop standard  
21 contract language to meet the requirements of subsections (1)(a) and  
22 (2)(a) of this section and make the language available on its web site.

23 (6) For purposes of this section, "off-site, prefabricated,  
24 nonstandard, project-specific items" means products or items that are:  
25 (a) Made primarily of architectural or structural precast concrete,  
26 fabricated steel, pipe and pipe systems, or sheet metal and sheet metal  
27 duct work; (b) produced specifically for the public work and not  
28 considered to be regularly available shelf items; (c) produced or  
29 manufactured by labor expended to assemble or modify standard items;  
30 and (d) produced at an off-site location.

31 (7) This section applies to contracts entered into on or after  
32 September 1, 2009, and expires December 31, 2011.

33 NEW SECTION. **Sec. 2.** The expiration of section 1 of this act does  
34 not affect any request or proceeding instituted prior to the expiration  
35 of section 1 of this act.

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